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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

A.O.,

Petitioner,

v.

THE SUPERIOR COURT OF SANTA  
CLARA COUNTY,

Respondent;

SANTA CLARA COUNTY  
DEPARTMENT OF FAMILY AND  
CHILDREN'S SERVICES,

Real Party in Interest.

H038062

(Santa Clara County  
Super. Ct. Nos. JD20302, JD20303)

A.O., mother of the two children at issue here, has filed a writ petition seeking review of the juvenile court's orders terminating reunification services and setting a hearing under Welfare and Institutions Code section 366.26.<sup>1</sup> (Cal. Rules of Court, rule 8.452.) Mother contends that she was deprived of due process due to unreasonable delays in the case, and that the Department of Family and Children's Services (the Department) failed to show by clear and convincing evidence that it provided her

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

reasonable reunification services with respect to visitation and with respect to the children's disclosures of sexual abuse. As we find that mother was not deprived of due process and that substantial evidence in the record supports the juvenile court's findings and orders, we will deny the writ petition.

## **BACKGROUND**

### ***Detention***

On September 12, 2010, mother and father were arrested after fleeing the scene of two hit and run accidents in Santa Clara County, and their children, seven-year-old AL. and four-year-old L., were taken into protective custody. Mother was driving at the time of the incidents while the entire family was in the vehicle, and father had slashed the tires of two vehicles, brandished a loaded weapon, and resisted arrest. Father was involved in a gang, and he and mother had earlier fled their residence in Fresno County because they believed they were being threatened by others with guns. At the time of the incidents in Santa Clara County, they believed they were being followed. The children were not properly restrained inside the vehicle, and there was a pipe with methamphetamine residue and a loaded firearm, later determined to be inoperable, in the vehicle. AL. had been sitting on the firearm before father moved it under the rear passenger seat where the children were sitting. Father admitted that he often kept a loaded weapon within reach of the children.

Both parents had a history of substance abuse. Father tested positive for methamphetamine at the time of his arrest, and mother admitted to previously using methamphetamine. Father had prior convictions for obstructing or resisting public officers. He also had a history of domestic violence against mother, including a conviction for inflicting corporal injury with a screwdriver. At the time of her arrest, mother had cuts and bruises on her arms and back, a scratch on her forehead, a puncture wound on one arm, and a laceration on her arm that was consistent with a stab wound. Father and mother had physically abused the children by hitting them.

On September 15, 2010, the Department filed petitions under section 300, subdivision (b) [failure to protect], as to AL. and L. Following a hearing the next day, the juvenile court ordered the children detained and placed in an emergency satellite home. The court also ordered supervised visitation for each parent upon release from custody. A jurisdiction hearing that was scheduled for October 14, 2010, was continued to October 21, 2010, following a request for a continuance by county counsel.

On October 18, 2010, the Department filed first amended petitions under section 300, subdivisions (b) [failure to protect] and (g) [no provision for support], as to both children. On October 21, 2010, following father's request for a continuance and a finding of good cause by the juvenile court, the jurisdiction hearing was continued to November 18, 2010. On November 18, 2010, the juvenile court set the matters for a contested jurisdiction hearing on January 4, 2011, and a readiness conference on December 14, 2010. At the readiness conference, the contested jurisdiction hearing date was vacated and the matters were reset for an early resolution conference on January 4, 2011. The matters apparently did not resolve on January 4, 2011, and on that date the juvenile court scheduled a mediation and a trial management hearing for February 10, 2011.

On February 9, 2011, the Department filed second amended petitions under section 300, subdivisions (b) [failure to protect], (d) [sexual abuse], (g) [no provision for support], and (j) [abuse of a sibling], as to both children. The children's caregiver at the time had reported to a social worker that the children had disclosed sexual abuse by father. On February 10, 2011, father requested a continuance due to the new allegations contained in the Department's petitions. The juvenile court found good cause for the request and scheduled an early resolution conference for February 28, 2011. On February 28, 2011, following a request for a continuance by father and a finding of good cause by the court, the early resolution conference was continued to March 14, 2011. On

March 14, 2011, the matters were not resolved. A mediation was scheduled for April 19, 2011, with a contested jurisdiction hearing to take place the following week.

Mother was released from custody in early April 2011. On April 8, 2011, upon ex parte application of the Department, the juvenile court ordered visitation to occur in a secured setting at the Department in the presence of a sheriff's deputy and that the sheriff's deputy search the parent prior to each visit.

The social worker's jurisdiction/disposition hearing report and addendums recommended that the children continue in an out-of-home placement and that the parents receive family reunification services. Regarding the September 2010 incident, mother was convicted in January 2011, of felony carrying a concealed firearm in a vehicle, two counts of misdemeanor child endangerment, and two counts of misdemeanor hit and run. Father was convicted of felony carrying a concealed firearm in a vehicle and the following misdemeanors: child endangerment, resisting arrest, exhibiting a firearm, and possession of drug paraphernalia.

The social worker reported that mother and father had been in a relationship for over ten years, and that there was a history of domestic violence perpetrated by father. Paternal relatives had seen or heard father hitting mother. A maternal relative had seen father pushing and shoving mother, and other maternal relatives had seen mother with black eyes and bruises on her body. Mother always provided an "excuse" about the bruises. Maternal relatives also reported that father brainwashed and controlled mother. For example, mother needed father's permission to do things and was not able to go to the store on her own. Father frequently called mother and would "cause a scene" at her work, which led to mother being fired from different jobs. Regarding father's conviction in 2004 for inflicting corporal injury on mother, father had stabbed mother twice in the back with a screwdriver. Mother denied to the police that father had caused the puncture wounds.

Although both parents denied domestic violence, AL. reported that father hit mother. AL. also reported that father had told her on one occasion to point a gun at mother and shoot her. AL. did not shoot the gun. She was scared and she and mother were crying. With respect to the laceration on mother's arm at the time of her arrest in September 2010, the parents and the children had different accounts regarding how mother sustained the injuries. Both children had reported that father cut mother with a knife.

The social worker reported that the children had suffered from other abuse. AL. and L. disclosed that father and mother had tied the children up. Mother and father had also hit them with a belt, a rope, or a hand. AL. disclosed to several people, including her foster mother, her therapist, the social worker, and the police, that father had touched her vaginal area. She indicated that her sister, L., had been touched by father. L. acknowledged to the social worker, among others, that father had touched her vaginal area. The children had also witnessed mother and father having sex, and the children had seen pornography. Father denied sexually abusing the children. When the social worker asked mother about sexual abuse of the children, mother indicated that she did not know it was occurring and did not believe it. The social worker told mother that she needed to show she was capable of protecting the children, even from father.

The social worker believed that father maintained control over mother even while they were incarcerated. Mother indicated to the social worker in January 2011 that she was going to ask the criminal court to let her serve her full eight-month sentence, so that her release might coincide with father's release. Upon her release from custody, she had been proactive and engaged in her case plan. However, the social worker was concerned that mother continued to support and be loyal to father, and was concerned about mother's ability to place the children's needs, security, and safety above the needs of father. Father was scheduled to be released from prison in mid-May 2011, and the social

worker did not know whether father would be charged criminally for the sexual abuse reported by the children.

### ***Jurisdiction/Disposition***

On April 19, 2011, following a mediation, the jurisdiction/disposition hearing was held. At the hearing, the second amended petitions were further amended, and the section 300, subdivisions (g) and (j) allegations were dismissed. Both mother and father, who were represented by separate counsel, signed waiver of rights forms and submitted the matters on the social worker's report, addendums, and memorandum. The juvenile court found the allegations in the newly-amended petition true and that the children were dependent children of the court within the meaning of section 300, subdivisions (b) and (d). The court ordered that the children be placed in a foster home and that both mother and father receive reunification services. Mother's case plan included a parent orientation class; a substance abuse parenting class; a 52-week child abuser's treatment program; random testing for alcohol and/or controlled substances; a substance abuse self-help program; and a domestic violence victims' support group. In addition, mother was to participate in counseling that addressed strengthening the parent/child relationship; the family dynamic; developing healthy relationships free from abuse, substance abuse, and domestic violence; trauma; child safety; and general personal insight for the purpose of stabilizing mental health.

The court also ordered supervised visitation for each parent of a minimum of two hours two times per week. The order stated that the social worker "has discretion to select the location and the supervisor of the visits," "to increase the frequency and duration of visits," "to permit unsupervised visits," and "to permit overnight visits." The order further stated that each parent's visits were to occur separate from the other parent, each parent's visits were to take place in a secured setting and in the presence of a sheriff's deputy, and each parent was to be searched by the deputy prior to the visit. A

case plan review hearing was scheduled for June 9, 2011, and a combined 6- and 12-month review hearing was scheduled for late October 2011.

The social worker's report for a case plan review hearing held on June 9, 2011, stated that since mother's release from jail, she had been actively participating in her case plan services. The social worker reported that father's parole conditions, effective May 2011, prohibited contact with any minor. Following the case plan review hearing, the juvenile court ordered that father have no visitation with the children until his parole conditions were modified.

In a report for the 6- and 12-month review hearing scheduled for October 24, 2011, the social worker recommended that the parents continue receiving reunification services. The social worker explained that mother remained on probation until April 2015. She was in compliance with her probation conditions, which included not leaving the county without approval by probation. In early August 2011, mother began individual therapy. In October 2011, the therapist reported that mother "has explored the potential of [father's] conviction and that she will continue moving forward alone to parent her daughters." According to the therapist, mother " 'feels confident that her daughters were not molested.' "

The social worker reported that mother and father continued to be a couple and wanted to live together with the children. Mother had obtained housing and employment and had consistently visited the children. Although mother had participated in her case plan services, the social worker believed that mother "continue[d] to minimize the risk that [father] presents to the children and herself." When the social worker asked mother whether it was possible that the children were sexually abused by father, mother stated " 'it is not possible.' " Mother did not know why the children made the allegations and indicated that perhaps "someone put it in their heads." The social worker believed that mother could not "ensure the children's emotional safety around their sexual abuse issues as she cannot consider 'the possibility' that what her children are saying may be true."

Further, mother had only begun to recognize that father had perpetrated violence against her in the form of emotional abuse, and she still denied that father had caused her physical injuries, as had been reported by the children.

The social worker reported that father had been in custody for most of the time since the children were taken into protective custody in September 2010. He had not participated in any of his case plan services due to his incarceration. Father was released on parole in May 2011, but violated parole that same month and was arrested. At the time of his arrest, father was with mother and less than one-half mile from where mother's visits with the children took place. In discussing the parole violation with the social worker, father indicated a willingness to violate parole again. Mother separately told the social worker not to think that they were " 'plot[ing] to kidnap the girls.' " Father admitted that he was in a Fresno gang. In August 2011, father was transferred to Fresno County jail for an outstanding warrant. Criminal charges were thereafter filed against father for continuous sexual abuse of a child (one count) and lewd acts on a child (two counts), along with a multiple victim allegation. Father denied the allegations to the social worker. He wanted to be out of custody and " 'tak[ing] care of his family.' "

The children were residing together in a foster home, and the social worker reported that they had bonded with their foster family. Both children were attending individual therapy. The children had been subpoenaed to testify against father in criminal court. The social worker recommended that mother's visitation with the children continue at twice a week for two hours per visit. The social worker stated that it was "imperative" visitation remain supervised, and that the presence of law enforcement was "critical to ensure the children's physical and emotional safety."

On October 24, 2011, at a hearing scheduled for a combined 6- and 12-month review, mother apparently opposed the Department's recommendations regarding visitation. The juvenile court set the matter for an early resolution conference on November 14, 2011.



In an addendum report for the November 14, 2011 early resolution conference, the social worker recommended that the parents continue to receive family reunification services. Mother's therapist had reported to the social worker that mother "minimized the issues involving the children entering" the dependency system and mother had an " 'emotional dependency' " on father. The social worker again stated that it was "imperative" that mother's visits with the children remain supervised and that the order requiring the presence of law enforcement was "critical to ensure the children's physical and emotional safety." Regarding the risk of abduction of the children by the parents, the social worker indicated that the parents had expressed a desire to be a family living together, father had violated parole only days after being released from prison and was found with mother, father indicated a willingness to violate parole again by returning to San Jose, father's parole conditions prohibited contact with children, mother did not view father's parole violation as serious, mother was emotionally dependant on father, and mother and father had "no connections with their family, friends or a community" which made them "a greater flight risk." The social worker further stated that mother needed to demonstrate that she was "able to process her own victimization perpetrated by [father]" and "able to accept and process the victimization perpetrated by [father] against the children" before any "stepping down in visitation status" occurred.

At the November 14, 2011 early resolution conference, following a continuance request by mother and a finding of good cause by the juvenile court, the matters were continued to December 1, 2011. The matters were not resolved on December 1, 2011, and the court set the matters for January 24, 2012.<sup>2</sup>

On January 13, 2012, the Department filed notice that it was recommending termination of reunification services for both parents.

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<sup>2</sup> The minutes for the December 1, 2011 proceeding, which were signed by the juvenile court, state that the matters were "[n]ot resolved, set for trial" and that the future January 24, 2012 proceeding was for "Trial: ERC 6 and 12-mo review."

The social worker's addendum report for the January 24, 2012 hearing recommended that reunification services be terminated for both parents and that a section 366.26 hearing be set for AL. and L. The social worker reported that she had previously met with mother in November 2011 to discuss various issues, including the risk of father using violence against mother and the children, mother's loyalty to him, and the extent to which mother was willing to comply with his wishes. Mother's therapist indicated in a letter dated January 20, 2012, that she had met with mother five times between August and October 11, 2011; that after receiving information from the social worker, the "focus" of therapy as of October 11, 2011, was the sexual abuse of the children; and that mother attended one appointment thereafter before missing an appointment and being "out of contact" with the therapist until early January 2012. The therapist stated that mother did not believe that father had molested the children. Instead, mother believed that the children were asked questions that they did not understand, that their answers were misunderstood, and that their "sexual knowledge," which was "beyond their age and understanding," was the result of seeing their parents engaged in sex. According to the therapist, mother acknowledged that her relationship with father "often depended upon her going along with [his] agenda." Mother also "dismiss[ed] any physical violence as trivial or the consequences of being under the influence." The therapist found that mother "may 'not be capable of considering the ramification' " of her relationship with father. Mother at age 13 had a " 'crush' " on father and at age 18 she married him. Mother considered father "the only 'reliable person in her entire life.' " The therapist explained to the social worker that when a person has been in a " 'controlled relationship,' " the person may perceive a partner's controlling behavior as caring or supportive and that it is hard for the person to understand that the relationship is not normal. The therapist expressed concern that 12 sessions of therapy were not enough and that long term therapy was needed regarding mother's attachment to father.

The social worker reported that father was transferred to Fresno County jail in August 2011. Mother's probation officer reported that mother was twice granted permission in November 2011, to go to Fresno to address an outstanding warrant. Mother instead visited father in Fresno County jail on both occasions and did not resolve the outstanding warrant. Between August and November 2011, while father remained in custody, mother had an increasing number of telephone conversations with father each month. In November 2011 alone, there were approximately 123 calls between the two, totaling more than 2,285 minutes. The social worker described the content of some of the recorded calls between October and December 2011. The two repeatedly expressed their love for each other, discussed apparent plans to leave the area, and discussed what mother should say to others. For example, father stated that " 'when you just going to get up and go, you going to get up in the middle of night and bounce [sic].' " Mother indicated it may be " 'any day like in the weekend.' " She also asked father if the location would have "cable," and father "stated that they do as they are 'Americanized.' " In another call, father stated, " 'get me out of here. Let's stick to our plan.' " Mother stated " 'fuck everything, fuck everyone, I don't want anything. All that matters is getting back together.' " In a subsequent call, father expressed confidence that mother "is going 'to bail him out.' " Another call included a discussion about mother saying what people wanted to hear, such as that she is not dependent on father. In a different call, father asked whether mother had told the children that he loved them, and she responded affirmatively. Father's parole conditions prohibited contact with any minor, including indirect contact with a minor through another person. In addition to the parents' contact by telephone, between October and November 2011, mother attempted three times to mail to father photographs of nude female body parts. The jail returned the photographs to mother. As of early January 2012, father was still in custody and awaiting trial.

In recommending termination of reunification services, the social worker explained that, although mother participated in some of her case plan activities and there

was a “reciprocal emotional connection” between mother and children, mother “continues to make choices that suggest that her emotional dependence on [father] is above any other situation in her life.” The social worker believed that father “gives specific directions to [mother] and she complies with them despite the possible consequences to her, such as violating the probation rules by visiting him.” The social worker found that mother “compartmentalizes” the issues between father and herself and her relationship with the children, and that mother “continues to believe [father] is not a risk factor to her or their children.” “So while [mother] is attached to her children, she continues to make choices that place her at risk of further criminal charges and failing to reunify with her children.” The social worker further requested that visitation remain supervised and with law enforcement present, due to concerns about the children being abducted by the parents.

On January 24, 2012, at the request of the Department and upon a finding of good cause, the juvenile court continued the matters to February 1, 2012, for trial setting on a contested 6- and 12-month review hearing. On February 1, 2012, the juvenile court set a trial management hearing for February 29, 2012, and the contested 6- and 12-month review hearing for March 9, 2012.

### ***Contested Review Hearing***

On March 9 and 16, 2012, the juvenile court held a contested hearing regarding the “6, 12, and 18 month statutory reviews.” On the first day of the hearing, the court denied a continuance request by father’s counsel. The court admitted into evidence the social worker’s report for the review hearing originally scheduled for October 24, 2011, as well as addendums and the report of the court-designated child advocate.

Elizabeth Espinoza, who had been the social worker assigned to the children’s cases since April 2011, testified as an expert in risk assessment, domestic violence intervention, and reunification of dependent children. According to Espinoza, the visits between mother and children went “really well.” Mother gave all her attention to the

children, was appropriately affectionate and very involved, maximized and utilized the entire visitation time, came “prepared,” was “very concerned about how well they’re doing, and ask[ed] questions.” Mother also demonstrated skills that she had learned from the child abuser’s treatment program. Both children enjoyed mother’s visits.

Espinoza had not “liberalized” visitation because she was concerned about the risk of the children being abducted by the parents. Since mother’s release from custody, visitation had been supervised by a sheriff’s deputy. Espinoza had listened to some recorded calls between the parents while father was in custody, and she believed that the parents were planning to take the children. Espinoza believed mother was capable of carrying out such a plan, because she had in the past been involved in criminal activities with father. Espinoza referred specifically to the incident in which mother was driving the family and was subsequently involved in a hit-and-run. She also referred to the fact that there was a weapon, albeit inoperable, in the vehicle. With respect to father, although his parole conditions prohibited contact with the children, Espinoza was concerned that if he was out of custody, he would be willing to violate the conditions of his parole in order to assist mother in abducting the children.

Mother had asked Espinoza that visits be increased and conducted outside. After Espinoza inquired of the sheriff’s deputy supervising the visits about the safety of visits outside of the Department’s premises, mother was allowed one visit in the “grass area” of the Department so she could engage in different activities with the children. Two other visits occurred outside because the visitation rooms were unavailable. All outside visits “went well” according to Espinoza, and there were no signs that mother had attempted to abduct the children.

Espinoza believed that she had the discretion to increase mother’s visitation. She testified, however, that it was not “logistically . . . possible” to accommodate the presence of law enforcement, as required by the juvenile court’s order, if visitation was increased. It was her understanding that eliminating the presence of law enforcement required an

order of the court. Espinoza testified that, even if she had the discretion to allow for visits without law enforcement, she would not have allowed such visits after she heard the parents' recorded phone calls, due to a safety concern. She explained that what she heard in the calls was not consistent with what mother presented in meetings with Espinoza or with other service providers.

Espinoza had monthly conversations with mother about her case plan services. Although Espinoza told mother that visitation was going well, Espinoza also had discussions with mother about areas of concern with respect to mother's case plan. Mother still needed to address her connection with father, given that mother "doesn't see him as a risk factor to the girls." An "immediate concern" included mother's discussions and visits with father. In terms of the future, given that mother and father wanted to remain a family and live together, the concerns with respect to the children included father's past domestic violence, substance abuse, and criminal involvement.

Espinoza explained that mother "sometimes compartmentalizes the situation" and focuses on what occurs during her visits with the children, without understanding that situations outside of the visits may positively or negatively impact the children, such as her relationship with father in other areas and other environments. For example, mother was told that the visits with the children were going well, but that she was making decisions with father that did not support the goal of reunifying in a safe environment. Espinoza attempted to help mother understand the issue of compartmentalization, including verbally and through drawings, and encouraged her to talk to her therapist about it as the therapist had made a similar assessment. Espinoza assisted mother in obtaining therapy at a reduced fee and in budgeting to pay for that fee.

Espinoza wanted mother to demonstrate that the children were her priority. Mother had stated that she wanted a healthy environment for the children and did not want to repeat the patterns and lifestyle that they had, but Espinoza found that mother's behaviors outside of her visits with the children did "not support those comments." For

example, mother risked violating probation in order to visit father in Fresno County jail. Mother's recorded phone conversations with father were also "very different" than what the Department saw in mother's visits with the children. There were comments about telling the social worker or service providers what they wanted to hear.

Espinoza expressed concerns about mother's ability to change her parenting style and to apply what she had learned through participation in services to the issues that presented a risk to the children, and specifically the issues in her relationship with father. Espinoza explained that "the expectation is that a parent . . . will take steps to ensure the safety of the children even if it's against the other parent. And in this case the concern has been that [mother] hasn't shown that." Although mother had not put the children at immediate risk with respect to father since Espinoza's involvement in the case, Espinoza testified that this was due to the Department's involvement and due to supervised visitation. Espinoza testified that "[t]he concern has been if we withdraw that supervision what is going to happen."

During the time that Espinoza had been working with the family, father had been in custody for all but a few days. It was Espinoza's understanding that father was being held on sexual abuse charges involving the children pending a criminal trial, and that he faced potentially years in prison. If father was convicted, Espinoza believed that the children would still be at risk emotionally in mother's care. Espinoza explained that the children, especially AL., had disclosed allegations of sexual abuse by father. However, mother had "not even been able to consider that as a possibility." Although AL. was receiving treatment, Espinoza explained that "it does not promote the emotional healing of a child that has experienced trauma if her experience is dismissed or denied."

The children had disclosed sexual abuse by father to the foster parents. Mother told Espinoza that she had not witnessed any sexual abuse of the children by father, and she had not suspected that they were being sexually abused. Mother questioned the disclosure made to the foster parents.

Espinoza provided mother's therapist with copies of the social workers' reports to the court. Mother's therapist indicated in a January 20, 2012 letter to Espinoza that, after receiving case information from Espinoza, the "focus" of mother's therapy had changed to the sexual abuse of the children. Espinoza testified that the sexual abuse had not originally been part of mother's treatment goals.

Espinoza testified that mother has acknowledged verbal abuse and some physical abuse by father. Espinoza believed mother's acknowledgment was "very inconsistent" and required a lot of "prompting" from Espinoza. Mother did not admit that the more recent physical injuries she suffered were the result of domestic violence by father, which conflicted with reports of those injuries by the children. Espinoza believed that this inconsistency would affect the children's sense of reality, and that placing the children in mother's care would put the children's emotional well-being at risk.

Jeff Johnson, the social worker who supervised mother's visits with the children, testified that he had not had a problem during the visits. He felt "secure" and "comfortable" during the visits based on mother being searched beforehand and the safety system that the Department had in place. When asked whether he was afraid mother would be dangerous to him or the children if she was not searched or the system was not in place, Johnson testified, "No, I don't think that."

Marla Kay Johanning, who was social worker Espinoza's supervisor, testified as an expert in domestic violence assessment and intervention. Based on court records and reports, including the social workers' reports, Johanning believed that domestic violence was occurring within the family.

Johanning testified that the children remained at risk until mother acknowledged what father had done to her and to the children. Johanning believed that, although mother had received services for months and father had been incarcerated during the majority of that time, father continued to exert control over mother. For example, mother sent pictures of her naked body parts to father at least three different times while he was



incarcerated, even though the jail found the pictures unacceptable and sent them back to her each time. Further, mother was not allowed to leave the county without her probation officer's permission, but she visited father twice in custody in Fresno County without permission. Additionally, although father had a parole condition prohibiting contact with any child, mother indicated to father that she would convey to the children that he loves them.

Johanning also raised the issue of mother's failure to acknowledge father's violence against her as witnessed by the children, and failure to acknowledge the sexual abuse that the children had consistently reported. Johanning believed that mother would question the children about what they had reported and would question their sense of reality, and that the children would be traumatized again. In this regard, the children's psychological and emotional well-being would still be at risk. Johanning believed that mother's visits with the children had gone well because the visits were "very structured," "supervised very closely," and included monitored conversations. However, if mother started questioning the children about their reports of violence by father against mother, or their reports of sexual abuse, it might "re-trigger their trauma."

Johanning also believed that family therapy for mother and the children was "premature." In such a therapeutic setting, the parent must be in a position to listen, receive, and validate what has happened to the child. In mother's case, Johanning found no evidence that mother was "emotionally or psychologically able to hear what the children have to say." If a parent questions or invalidates what a child says, then the therapist is placed in the role of "try[ing] to do a lot of damage control."

Mother testified that she had been with father for almost 12 years and that they had been married for almost nine years. Regarding the September 2010 incident that led to the children's removal, mother admitted that she was under the influence of methamphetamine at the time. She acknowledged that she put her children's lives in danger during the incident.

Mother testified that she first learned about the children's claims of sexual molestation by father when she was incarcerated. At some point, she also read the children's statements that were contained in the social worker's reports, and she discussed the issue of sexual abuse with the social worker. Mother also discussed the sexual abuse allegations with her therapist, Sallie Danenberg. Mother testified that the children never told her that father had touched them inappropriately, and she never saw anything that made her think they had been molested. If the children had been molested by father, mother believed they would feel hurt or betrayed knowing that mother was still talking to him. Mother felt confused, because the children had asked about father and seemed to miss him. Mother did not think children would ask about a perpetrator and not show fear. She believed she could learn "different things about the effects of sexual abuse on children" if she had services in that regard. Mother testified that she had talked "briefly" about the children's sexual molest allegations in therapy. Mother had also talked about it with the social worker "a handful of times." At the time of the contested hearing, it was mother's understanding that father currently faced criminal charges relating to sexual abuse of the children. She believed that father may be in custody for up to 16 years if convicted. Mother wanted to have father in her life emotionally, and she intended to continue contacting him while he was in custody. Mother and father's plan for the future was to have the family "back together."

With respect to the social worker's belief that mother was just telling service providers what they wanted to hear, mother testified that her conversations with father were "taken out of context" and that she was "vent[ing]" to him at times. When asked whether she behaved differently with father than with others, mother acknowledged that she "act[ed] different with different relationships." Mother denied having any plans to take the children and run away.

Mother had asked the social worker for more visits with the children. According to mother, the social worker indicated that visits would not be increased until law

enforcement's presence was no longer necessary and mother needed a court order in that regard.

Nicole Padilla, who led the child abuser's treatment program that mother participated in, testified as an expert in "child abuse treatment to the parent." With respect to communication skills and other "tools" that mother was learning in the child abuser's treatment program, Padilla testified that if mother had more time with the children, she would be able to practice those tools more. More contact also increases a parent's understanding of a child's developmental needs, and solidifies constructive changes in the parent.

Danenberg, who was mother's therapist, testified as an expert in the diagnosis and treatment of psychological disorders. Mother first visited Danenberg in August 2011, and she had been to 12 sessions with Danenberg by the time of the contested hearing in March 2012. Danenberg received a packet of documents from the Department in September 2011, including documents that had been filed with the juvenile court and information regarding the children's disclosures of sexual abuse, such as drawings used during an officer's interview of the children. At the start of therapy, it was Danenberg's understanding based on a representation from mother that "those charges had been dropped and were not going to be pursued." The children's sexual abuse disclosures became a focus of therapy only after the social worker called Danenberg in late 2011, and asked whether she and mother had been "working on it." The social worker wanted mother to "focus more on the sexual abuse and coming to terms with that." Since January 2012, there had been three therapy sessions in which the focus was the sexual abuse of the children.

Prior to the social workers' call, the issue of the children's sexual abuse disclosures had come up during therapy although "not very much." Danenberg testified: "I had asked [mother] about it and we had talked about it. It had come up several times. Just in generally talking about her case and in my asking questions about the status of the

father it was my understanding from [mother] that Fresno County had picked up the charges and that he was waiting in jail pending prosecution. . . . I had conversations with her about her plans depending on the outcome of that.”

Danenberg, at some point, talked to mother about an investigation that had been done into the children’s claims. Danenberg “felt it was pretty strong and pretty compelling . . . statements” by the children, and she shared those feelings with mother. According to Danenberg, mother believed that “the children did not understand the questions and did not understand what they were describing or talking about.” Mother felt that if something had happened to the children, they would tell her.

Danenberg testified that in the recent therapy sessions focusing on the sexual abuse of the children, mother was “having a great deal of trouble believing primarily because her daughters had not disclosed or . . . had not shown any fear of their dad or discomfort at all. And basically she took the position that if it proves to be true then she knows what she’s going to do. And she just is going to focus on her case plan and doing what she needs to do and not let those other things worry her because if they do, it might be so overwhelming she won’t be able to focus and take care of what she needs to do for the girls.” Danenberg testified that it would be “helpful” for mother to “deal” with the issue of father’s molestation of the children and be “given a good amount of time to do that.” Danenberg did not believe that mother had had enough therapy sessions to assist her in coming to terms with what may have happened to the children. If mother continued therapy around that issue, Danenberg believed mother would be able to come to terms with it.

Danenberg had encouraged the Department to increase mother’s contact with the children. She wanted to see how mother handled a four-hour supervised visit because it “gives enough time for kids to get bored and start to act out and test the boundaries.” Danenberg did not believe the presence of a sheriff’s deputy was necessary because she did not think mother would abscond with the children on her own. Danenberg

acknowledged, however, that if father was out of custody, there would be a “legitimate fear” that mother would abscond with the children at father’s instruction.

Danenberg further testified that if father was released from custody and mother reunified with him, Danenberg “would be very concerned for everybody’s safety.” Danenberg did not believe that mother yet had the tools to identify the negative or “toxic” things in her relationship with father although it was “very achievable.” Danenberg estimated it would take three more months of treatment, including simultaneous treatment by a psychiatrist, for mother to be in a place of awareness, and that mother would probably “begin to feel that she can survive this in six months.” Danenberg did not believe that mother could parent the children on her own during this six-month time frame.

On March 16, 2012, after receiving evidence and hearing argument from counsel, the juvenile court took the matters under submission. On March 19, 2012, the court found by a preponderance of the evidence that return of the children to the parents would create a substantial risk of detriment to the children’s safety, protection, or physical or emotional well-being. As to mother, the court explained as follows. “There has been no real argument made that the children, and the comments made by the children about their experiences and their lives should not be believed or are not credible. The real concerns that have been put forth are about [mother’s] ability to accept either their reality or the reality in general of their experiences and her own experiences, the need for her to be able to accept certain possibilities in order to keep them emotionally safe, and help them heal, and also to ensure that they are not ever put in a situation again where their physical or emotional well-being can be significantly compromised based on the environment that they may be put into.

“Because there has not really been any significant question put before the Court as to whether the children should be believe[d] in what they have expressed about their own

experiences, the Court is looking very much at how [mother] at this moment in time, with the services that have been offered, is responding to those particular concerns.

“It is clear to the Court that [mother] is making efforts, and that she has made some progress in the area of being able to recognize that, as the evidence shows, she has been a victim of significant, extensive and severe domestic violence, that this has affected her and her entire family in a profound and detrimental way.

“Her ability to describe her own experiences, to accept the children’s experiences, and to express how she might be able to, at this point in time, address those very, very serious issues for herself, for her children, and with respect to the primary alleged perpetrator, [father], is still in the Court’s opinion in its infancy, and there is quite a bit of work that still must be done.

“And all of the professionals who have talked to the Court about this issue, I believe agree on that issue. It is not a hopeless possibility. It is not the result of a lack of desire on [mother’s] part to accomplish that for herself and for her children, but it is not at this time something that she can do, at least based on the evidence that the Court has before it.

“... [T]he court does believe that the sexual abuse allegations made by the children are significant, not the primary factor as county counsel has expressed. The Court does believe that the long history of domestic violence is the primary factor.

“However the expression of sexual abuse by the children, the father’s pending charges for sexual abuse currently, . . . the fact that the children have not been seriously called into question as far as their credibility or believability, is all part of the larger picture that the Court is considering in terms of where [mother] is right now, in her ability to provide for the emotional well-being of the children, and in addition, their physical safety and protection as well.

“Also, the fact that perhaps at least one of the reasons that [mother] delayed her initial release from custody was to time her release to be close to that of the father, the

Court believes is also significant. . . . [Mother's] decision at least in part to keep herself incarcerated to be released closer in time to the release of the father shows how significant the issues were at that time, with respect to her dependence . . . on the father, what has been proved to the Court to be a pattern and cycle of intimate partner or domestic violence, and how significant the issues were that had to be addressed by the services and the efforts of [mother] over the period of time that the law allows for reunification."

The juvenile court also found by clear and convincing evidence that the Department offered in a "good faith way" reasonable services to mother. The court stated that the Department "did identify the issues that needed to be addressed and referred the mother in a reasonable way to reasonable services . . . ." The court referred to the "counseling services, the Child Abuser's Treatment Program and the other services offered by the Department . . . ." The court also found that the presence of the sheriff's deputy had "not in any significant way interfered with the quality of the supervised visitation" and had "not . . . been detrimental to the experience that the mother and the children [had] had . . . ."

The juvenile court further determined that mother did not fall "into any of the categories" for which services may be extended beyond 18 months and that, even if the court had the discretion to extend services beyond that timeframe, there were "not . . . such extraordinary and significant circumstances in this particular case" justifying the exercise of such discretion. The court adopted the findings and orders, including the termination of reunification services, proposed by the Department, and set the section 366.26 hearing for July 12, 2012. With respect to mother's visitation, the court ordered that the same restrictions, including the presence of a sheriff's deputy, remain in place, and specified that the social worker had the discretion to allow for visits without a sheriff's deputy, "if deemed appropriate, without further court order."

## DISCUSSION

### *A. Due Process*

Mother observes that approximately six months elapsed between the time that the children were detained in September 2010, and the hearing on jurisdiction/disposition in April 2011. She further observes that although a combined 6- and 12-month review hearing was originally scheduled for late October 2011, the contested hearing was not held until more than four months later in March 2012. Mother contends that, “[t]hrough no fault of her own, [she] did not have the benefit of judicial review for approximately 10 months of this case. [She] believes that she has been deprived of Due Process due to the unreasonable delays in this case.” The Department argues that no due process violation occurred.

We are not persuaded that mother’s due process rights were violated. Mother does not clearly articulate why the court’s setting of a particular hearing on a particular date was unreasonable under the circumstances of the case. To the extent the juvenile court granted a continuance, mother does not identify where in the record an objection, if any, was made by her to the continuance. In this writ proceeding, she does not contend that the juvenile court improperly continued a particular hearing. Mother also does not identify anything in the record suggesting that the Department, father, the children, or their respective counsel attempted to stall the proceedings. Further, it appears that any delay in holding the combined review hearing would have operated to mother’s benefit, as it provided her with additional time to complete her case plan. In this regard, we observe that during argument to the court near the conclusion of the combined review hearing, mother’s counsel sought a continuance to give mother “the chance . . . to make the progress necessary within the next six months” as described by her therapist, “or to see what happens” with father’s criminal case. Under these circumstances, we are not persuaded by mother’s argument that she was deprived of due process due to any delay in the case. (*In re Brian R.* (1991) 2 Cal.App.4th 904, 924-925 [determining that scheduling



delay did not violate father's due process right, where juvenile court attempted to accommodate father's desire to litigate issues, no evidence that department attempted to stall resolution of case, delay was to father's benefit, and counsel did not object to hearing date extension].) To the extent mother contends she was denied due process as a result of not receiving reasonable services, we reject that argument for the reasons stated below.

### **B. Reasonable Reunification Services**

Mother contends that reasonable reunification services were not provided because 1) she did not receive adequate visitation and 2) there was an absence of services earlier in the case directed at addressing the children's sexual abuse disclosures. Before considering mother's contentions, we first set forth the applicable legal principles.

Section 361.5, subdivision (a), generally mandates that reunification services are to be provided whenever a child is removed from the parents' custody. (See *In re Luke L.* (1996) 44 Cal.App.4th 670, 678 (*Luke L.*)) "Only where there is clear and convincing evidence the [Department] has provided or offered reasonable services may the court order a section 366.26 hearing." (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1165 (*Robin V.*); § 366.21, subd. (g)(2).)

"Reunification services must be 'designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300.' (§ 362, subd. (c).) Accordingly, a reunification plan must be appropriately based on the particular family's 'unique facts.' [Citation.]" (*In re T.G.* (2010) 188 Cal.App.4th 687, 696; see *Luke L.*, *supra*, 44 Cal.App.4th at p. 678.) " "[T]he record should show that the [Department] identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist the parents in areas where compliance proved difficult . . . ." [Citation.] [Citation.]" (*In re T.G.*, *supra*, at p. 697; *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 793-794.) "Among its

components, the reunification plan must include visitation. (§ 362.1.) That visitation must be as frequent as possible, consistent with the well-being of the minor. (*Ibid.*)” (*Luke L., supra*, at p. 679.)

“The adequacy of reunification plans and the reasonableness of the [Department’s] efforts are judged according to the circumstances of each case.” (*Robin V., supra*, 33 Cal.App.4th at p. 1164; *Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1345.) That additional services might have been possible, or that the services provided were not the services the parent thought were best for the family, does not render the services offered or provided inadequate. “ ‘The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.’ ” (*In re T.G., supra*, 188 Cal.App.4th at p. 697; *In re Misako R.* (1991) 2 Cal.App.4th 538, 547 (*Misako R.*).

On appeal, the applicable standard of review is sufficiency of the evidence. (*In re T.G., supra*, 188 Cal.App.4th at p. 697; *Robert L. v. Superior Court* (1996) 45 Cal.App.4th 619, 625-626.) “In reviewing the reasonableness of the services provided, this court must view the evidence in a light most favorable to the [Department]. We must indulge in all legitimate and reasonable inferences to uphold the [juvenile court’s findings]. If there is substantial evidence supporting the judgment, our duty ends and the judgment must not be disturbed.” (*Misako R., supra*, 2 Cal.App.4th at p. 545; *In re Monica C.* (1995) 31 Cal.App.4th 296, 306.) “We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.)

With these standards in mind, we turn to mother’s specific contentions concerning whether the Department provided reasonable services.

## **1. Visitation**

Mother contends that, despite her progress and compliance with her services, the Department failed to increase the frequency and duration of visitation, and otherwise liberalize visitation. She argues that social worker Espinoza erroneously believed that she did not have the discretion to permit visits without the presence of law enforcement. According to mother, any ambiguity in the visitation order about the social worker's discretion in this regard should have been clarified by the Department with the juvenile court. Further, although Espinoza testified that she would not have liberalized visitation even if she had greater discretion due to the risk of the children being abducted, mother argues that the concern about abduction was without any factual support.

The Department contends that it “continuously addressed the primary barrier to advancing the mother’s visitation,” which was her “ongoing victimization by the father and her denial of his victimization of the children.” Mother, however, “conspired” with father “to tell people what they wanted to hear and worked on [a] ‘plan’ to reunite in lieu of internalizing real change and progress.” The Department asserts that there was a sufficient basis for its continuing recommendation to the juvenile court that visitation occur in the presence of law enforcement. Moreover, the juvenile court found that the presence of the sheriff’s deputy did not affect the quality of mother’s visits, and the court continued that requirement in its order following the contested review hearing. Lastly, the Department contends that if mother believed there was an ambiguity in the visitation order, she should have raised the issue with the court.

We determine that there is substantial evidence to support the juvenile court’s finding that the Department provided reasonable services in this case with respect to visitation.

First, the evidence presented at the contested review hearing established that the visits between mother and the children had gone “really well,” mother was appropriately affectionate and very involved during the visits, and both children enjoyed mother’s

visits. The evidence thus supports the court's finding that the presence of the sheriff's deputy had not significantly interfered with the quality of mother's supervised visitation and had not detrimentally affected the experience of mother and children during visitation.

Second, the Department continually recommended to the juvenile court that limitations be placed on mother's visits, and those limitations were reasonable. The Department's ongoing recommendation to the juvenile court was that visitation be supervised and that law enforcement be present. The social worker testified that even if she believed she had the discretion to allow visitation without a sheriff's deputy present, she would not have allowed such visits.

We cannot conclude that the concern about the parents taking the children was unwarranted. The record reflects that mother and father wanted to be together as a family. As reported by the social worker, the content of the parents' recorded calls suggested that they had plans to take the children. It was reasonable for the Department to be concerned that mother and father might act on such plans, given that they had previously failed to follow the law or comply with other obligations imposed upon them. For example, although father's parole conditions included a no-contact provision regarding children, he apparently violated another parole condition and, while subsequently in custody, expressed a willingness to violate parole again. Mother's convictions arising out of the September 2010 incident, including hit and run and carrying a concealed firearm in a vehicle, occurred while she was with father. More recently, in November 2011, mother travelled out of the county to visit father in jail without obtaining her probation officer's permission, and around that same time period, she repeatedly attempted to send impermissible photos to father. She also apparently conveyed messages from father to the children, although father's parole conditions prohibited such contact. Mother thus appeared to be connected to father in such a way that she was willing to do things with him or for him despite a risk that she or the

children might suffer adverse consequences. Further, mother's therapist testified that there would be a "legitimate fear" mother would abscond with the children at father's instruction if he was out of custody. According to the social worker's description of the parents' recorded calls, the two had discussed mother "bailing out" father. The social worker also reported that mother and father had "no connections with their family, friends or a community" which made them "a greater flight risk." With respect to increasing visitation, the social worker testified that it was not "logistically . . . possible" to do so while also accommodating the presence of law enforcement. No evidence to the contrary was presented. On this record, it was eminently reasonable for the Department to continue visitation in a supervised setting and in the presence of law enforcement.

Third, the Department offered services and otherwise attempted to assist mother in addressing the issues that made it necessary for visitation to be supervised and in the presence of law enforcement. (See *In re Alvin R.* (2003) 108 Cal.App.4th 962, 973 [department must make some "effort . . . to overcome obstacles to the provision of reunification services"].) Those issues necessitating restrictions on visitation revolved around mother's limited understanding of father's relationship with her and father's relationship with the children, where all of the relationships involved abuse. With respect to these issues, mother completed a domestic violence victims' support group, participated in therapy, and repeatedly met with the social worker. As noted, however, mother's therapist testified that a "legitimate fear" existed regarding mother absconding with the children at father's instruction if he was out of custody. The therapist further testified that mother did not yet have the tools to identify the negative or "toxic" things in her relationship with father, and that months more of therapy was needed. The continuing restrictions on visitation were therefore not unreasonable.

In sum, the limitations on mother's visitation were reasonable, and the visitation was "as frequent as possible, consistent with the well-being of the [children]." (*Luke L.*,

*supra*, 44 Cal.App.4th at p. 679; see § 362.1, subd. (a)(1)(A).) Accordingly, we conclude that reasonable services were provided to mother with respect to visitation.

## **2. Sexual disclosures by the children**

Mother next contends that the social worker failed to provide services “earlier in the case, aimed at addressing the sexual abuse disclosures” by the children, and thus the Department failed to offer reasonable services. The Department argues that it “identified the issues that the mother needed to address and assisted the mother in every reasonable way to help her.”

We determine that substantial evidence supports the juvenile court’s finding that reasonable services were provided in this case. The Department provided mother with referrals for a domestic violence victims’ support group, a child abuser’s treatment program, substance abuse assessment and treatment, and individual therapy. Mother started therapy with Danenberg in August 2011. The Department paid for 12 sessions of mother’s therapy and, once the funding ended, obtained the therapist’s agreement to continue providing therapy to mother at a reduced rate. The Department also helped mother budget for the reduced fee. Both mother and the therapist were aware of the children’s sexual abuse allegations, as each had had communications with the social worker about the allegations, and the therapist had received documents from the Department that contained information regarding the children’s disclosures of sexual abuse. Although mother had represented to the therapist at the outset of therapy that sexual abuse charges had been “dropped,” the children’s sexual abuse disclosures nevertheless came up “several times” during their early therapy sessions, and actually became a “focus” of therapy as of October 11, 2011, after the social worker provided case information to the therapist. Despite the social worker’s discussions with mother regarding the children’s sexual abuse disclosures, and mother’s multiple sessions with the therapist who conveyed to mother that the children had made “pretty strong and pretty . . . compelling statements,” the evidence at the contested review hearing reflected

that mother still had difficulty accepting the possibility that father had sexually abused the children.

Although the issue of sexual abuse of the children was not originally part of mother's treatment goals in therapy, and although the evidence reflected that sexual abuse became a focus of therapy only as of October 2011, nothing in the record suggests that earlier services specifically addressing the issue of sexual abuse would have changed the outcome of the contested review hearing. The juvenile court found that mother had been the "victim of significant, extensive and severe domestic violence" and that it had significantly affected her and the rest of the family. The court further found that mother's "ability to describe her own experiences, to accept the children's experiences, and to express how she might be able to, at this point in time, address those very, very serious issues for herself, for her children, and with respect to the primary alleged perpetrator, [father]," was still "in its infancy, and there is quite a bit of work that still must be done." The court determined that the "long history of domestic violence" was the "primary factor" in the case, although the sexual abuse allegations by the children were also "significant." The court explained that "the expression of sexual abuse by the children, the father's pending charges for sexual abuse currently," and "the fact that the children have not been seriously called into question as far as their credibility or believability" were "all part of the larger picture that the Court is considering in terms of where [mother] is right now, in her ability to provide for the emotional well-being of the children, and in addition, their physical safety and protection as well." The court also referred to mother's "decision at least in part to keep herself incarcerated to be released closer in time to the release of the father" as showing "how significant the issues were at that time, with respect to her dependence . . . on the father, what has been proved to the Court to be a pattern and cycle of intimate partner or domestic violence, and how significant the issues were that had to be addressed by the services and the efforts of [mother] over the period of time that the law allows for reunification." In view of the fact

that mother received reasonable services concerning domestic violence, including individual therapy, and in view of the court’s findings that mother’s ability to address that issue was still in its “infancy” and that “quite a bit of work” still needed to be done by mother, it is apparent that earlier services specifically directed to the issue of the children’s sexual abuse disclosures would not have changed the court’s determination that mother still had much work to do regarding the domestic violence issue, or changed the court’s ultimate conclusion that return of the children would create a substantial risk of detriment to the children’s safety, protection, or physical or emotional well-being.

### **DISPOSITION**

The writ petition is denied.

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BAMATTRE-MANOUKIAN, ACTING P. J.

WE CONCUR:

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MIHARA, J.

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DUFFY, J.\*

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\*Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.